

APPLICANTS:
John and Kelly Aksomitus

**REQUEST: Variances to enlarge
the existing garage and construct
an addition within the required setbacks**

HEARING DATE: April 28, 2004

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5409**

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: John and Kelly Aksomitus

LOCATION: 709 Heston Court, Brentwood Park subdivision, Bel Air
Tax Map: 48 / Grid: 1E / Parcel: 194 / Lot: 58
Third Election District

ZONING: R3 / Urban Residence District

REQUEST: A variance pursuant to Section 267-36B, Table VI, of Harford County Code, to allow an addition within the 30 foot rear yard setback (27 foot setback proposed), and a variance to allow an addition to enlarge the existing garage within the required 25 foot front yard setback (16 foot setback proposed), in a R3/COS District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified Kelly Aksomitus. Mrs. Aksomitus indicated that she and her husband were requesting a variance to allow a family room to be built off the back of their house which would encroach into the required rear yard setback by 3 feet. She and her husband were also requesting a variance to allow an expanded garage with a second bay to be built on their property, which would encroach into the front yard setback by 9 feet.

Mrs. Aksomitus indicated that she and her husband had four small children, and they need to extend the living area of their home. She indicated that a family room could not be extended along the back wall of their house as there is both a kitchen door and a basement door which block expansion in those directions. Accordingly, the family room must be built out, or toward and into the rear yard setback of the property, in order for them to obtain the size family room that they wish. Mrs. Aksomitus indicated that they had received no objections from any of their neighbors concerning the proposed family room.

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For similar reasons, that is, lack of space, the Applicants wish to expand their garage to include a second bay. The expanded garage would extend approximately 9 feet into the front yard setback of the property. At present, the Applicants park their vehicles in the driveway. The existing single car garage is full of family belongings, tools, lawn equipment, etc., to the extent that it will not hold a car. They need the additional room an expanded garage would give to them.

Mrs. Aksomitus believes her property is unique as it is surrounded by three roads, Brentwood Park Drive, Farrow Court and Heston Court. A review of the site plan introduced by the Applicant, attached to the Staff Report as Attachment 3, shows that not only is the property surrounded by three roads, but the property is also separated from Brentwood Park Drive by a 10 foot buffer strip, a 4 foot walkway, and a 6 foot planting strip.

Mrs. Aksomitus testified that out of the 400 or so homes located in Brentwood Park, approximately 7 homes have a similar road configuration, and a number of those homes have two car garages. She knows of one garage that extends into the setback.

Mrs. Aksomitus also indicated that she would consider changing the configuration of the garages, assuming permission were granted, so that the new two bay garage would have access off Farrow Court, instead of Heston Court. She indicated that many homes in Brentwood Park have two car garages.

Mrs. Aksomitus indicated that it was possible her father would come to live with them, and she was in desperate need of additional space.

Next for the Department of Planning and Zoning testified Anthony McClune.

Mr. McClune indicated that in the Departments opinion the property was not unique. It is a corner lot and is subject to 2 front yard setbacks, one off Heston Court, and one off Farrow Court. The house on the Brentwood Park Drive side is subject to a rear yard setback. Mr. McClune indicated that this configuration was typical of most corner lots in the Brentwood Park subdivision. He also testified that the neighborhood has a variety of two car and single car garage configurations. Indeed, Mr. and Mrs. Aksomitus' property is somewhat larger than other lots in the area.

Mr. McClune indicated that the applicable setbacks for the Aksomitus' property were 25 feet off Farrow Court; 25 feet off Heston Court; and 30 feet off Brentwood Park Drive.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

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- (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

I. Variance to expand the existing garage to include a second bay.

The Applicants assert a need for a second garage bay. To construct this they need to impact their front yard setback by 9 feet. They have 4 children with all of the belongings, toys, and recreational equipment which come with such a family. The Applicants' two cars are parked in the driveway; the existing single car garage is filled. They need more space, and accordingly seek permission for the second garage. The expanded garage is accessed off Heston Court. The new garage bay would be built next to the present one, and would also face Heston Court. Alternatively, the Applicants suggested the garage could be accessed off Farrow Court. For the purpose of this decision it will be assumed, since nothing to the contrary was suggested, that the variance to the front yard setback along Farrow Court would be the same regardless of the orientation of the expanded garage.

The Applicants must comply with the 25 foot setback from Farrow Court. This is one of two front setbacks on the Applicants' property. This could be construed as an unusual feature of the property, and it is so found.

The evidence must further, however, show that the Applicants suffer a practical difficulty because of the uniqueness of their property. In short, they must show that the application of the Harford County Development Regulations impacts them differently, and creates a hardship because of this unique condition. In fact, however, there is no legally sufficient impact which can be articulated which would rise to the level of practical difficulty resulting from this unusual feature of the property.

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The Applicants already have a garage on the property. Some residential lots in the development, but by no means all, have 2 garages. All properties with a front yard setback would be similarly impacted; all property owners must build outside of the 25 foot setback. If the Applicants were unable to build any garage, then their argument would be more persuasive. In that event they would be precluded from building a structure enjoyed by others in the neighborhood because of the impact of the unusual double front yard setback. They are not so constrained, however, and it is so found that the Applicants, while they arguably suffer an unique characteristic, i.e., two front yard setbacks, do not suffer resulting practical difficulty. Accordingly the variance cannot be granted.

In short, while the Applicants may have shown an entitlement to one garage, given the prevalence of similar one car garages in their neighborhood, they are not entitled, as a result, to a relaxation of the Code requirements to build a two car garage.¹ It cannot be found that the inability to construct a two car garage, designed to store the possessions of a large family, is a practical difficulty caused by an unusual feature of the property. This variance must be accordingly denied.

II. Request for variance to build a family room which extends into the 30 foot rear yard setback by 3 feet.

The Applicants are requesting a 3 foot rear yard variance in order to build their proposed family room. The family room cannot be extended laterally along the house any farther than planned due to the existence of the basement entrance and kitchen. The Applicants are as a result forced to go out, toward the rear yard lot line in order to get the floor space they desire.

It is found as a matter of fact that the rear yard of the property of the Applicants is unique. It is bordered by not only a 10 foot buffer strip, labeled “open space”, but also by a 4 foot walkway, and then a 6 foot planting strip. Only then does the roadway of Brentwood Park Drive begin. In essence, while the Applicants have a 30 foot rear yard setback, the actual distance between their house and Brentwood Park Drive is 50 feet (30 foot setback, 10 foot buffer, 4 foot walkway and 6 foot planting strip).

This unusual feature causes the Applicants hardship. That hardship is that they cannot build the family room planned because of the shallowness of their back yard. The Zoning Regulations would not prohibit such a family room to be built by those individuals who did not border the 10 foot buffer strip, as, in most instances, that buffer strip would have been incorporated into the Applicants’ back yard.

¹ Code at Section 267-11(b) states “No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1.”

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Accordingly, the application of the Development Regulations causes hardship on the Applicants due to the unusual nature of the back yard. The family room, as planned, can only be built outwards, toward the back yard. A 3 foot variance into that 30 foot rear yard setback is the minimum relief necessary to allow the Applicants to construct a family room. There is no showing of adverse harm to the neighbors or the neighborhood if the rear yard setback variance were granted.

CONCLUSION:

For the above reasons the requested variance to impact the front yard setback by 9 foot in order to construct a second garage bay is hereby denied.

The 3 foot variance to the 30 foot rear yard setback to construct a family room, as proposed by the Applicant, is hereby approved, provided:

1. A landscape plan be submitted to and approved by the Harford County Department of Planning and Zoning.
2. The exterior finish of the family room be in conformity with the appearance and exterior materials used in the neighborhood.

Date: May 21, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner